In the High Court of Judicature at Madras

Dated : 22.8.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1023 of 2007

Shri Sunil Koliyot
27, Valluvar Street
Arumbakkam
Chennai 600 016. .. Appellant

Vs

The Income Tax Officer
Ward V (3)
Chennai 600 034. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 16th t March 2007 made in I.T.A.No.1664/2004 for the assessment year 1997-98 against the order of Deputy Registrar, Income Tax Appellate Tribunal, 'C' Bench Madras dated 16.3.2007 in ITA.1664/Mds/2004 and against the order of Commissioner of Income Tax (Appeals)VIII, Madras-34 dated 11.3.2004 in IT/Appeal Nos.23/2003-04 arising out of the assessment order of Income Tax Officer, ward -V, (3) Madras-34 dated 28.3.2003 in PAN/GIR No.AABPK 2720N.

For Appellant : Mr.R.Pradeep
for Ms/.Subbaraya Aiyar

For Respondent:- Mr.J.Naresh Kumar
Standing Counsel for IT

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JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed by the assessee against the order of the Income Tax Appellate Tribunal Madras 'C' Bench made in I.T.A.No.1664/2004 dated 16.3.2007. The relevant assessment year is 1997-98. The substantial question of law formulated for entertainment of the appeal is as follows:-

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"Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the loss incurred by subscribing to a chit is not allowable as a business loss?

2. The facts of the case proceed as follows:- The appellant is engaged in the business of interior decoration. For the assessment year 1997-98, the appellant filed the return of income on 17.12.1997 admitting income of Rs.5,23,017/-. The return was processed under section 143(1)(a) on 30.12.1998. Notice under Section 148 was issued on 4.12.2001 and assessment under Section 143(3) read with 147 was completed on 28.3.2003 determining the total income at Rs.9,59,074/-. While completing the assessment, the assessing officer had disallowed the claim of deduction in respect chit loss amounting to Rs.3,23,949/- on the ground that running a chit fund or being a member of such fund was not the business of the appellant that the lumpsum amount received did not give rise to any income assessable to income tax by rejecting the contention of the appellant that he had been financing his business by subscribing to chits and the bid amount was deposited with the bank, that the amount foregone on chits after adjustment of dividend earned is treated as interest payments and hence the interest payments is allowable as deduction. As against the assessment order, the appellant preferred appeal before the Commissioner of Income Tax Appeals. The Commissioner of Income Tax Appeals accepted the contention of the appellant and deleted the disallowance. The Revenue in its turn preferred appeal to the Income Tax Appellate Tribunal against the order of the Commissioner of Income Tax Appeals. The Tribunal allowed the appeal filed by the Revenue. The correctness of the said order is now put in issue before this Court.

3. Learned counsel appearing for the petitioner contended that the amount received from the chit fund has been invested in the business and hence the loss sustained in bidding the chit has to be treated as a business loss.

4. We heard the arguments of the learned for the appellant and perused the materials on records.

5. We are not able to countenance the arguments of the learned counsel appearing for the appellant for the simple reason that the business of the assessee is only interior decorator and the investment in the chit and bidding chit for lower amount would not in any way have nexus with the business of the appellant. To be a member of the Chit fund was not the business of the appellant. The chit transaction being one, where the members of the chit made contributions to the fund by monthly instalments and receive lumpsum amount, but at a discount. The discounted amount would be

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distributed amongst the members as dividend and the members have to contribute their monthly instalments upto the last instalment. Thus the contribution made to the chit fund cannot be treated as business expenditure or the receipt of lumpsum amount or the dividend could be regarded as business activity of the appellant. The Punjab and Haryana High Court in the case of SODA SILICATE AND CHEMICAL WORKS VS. CIT (179 ITR 588) has taken the view as follows:-

> "There was clearly mutuality amongst the contributors and participators of a chit fund with their identity being known and well established. Hence, contributions made to the chit fund could not be treated as revenue expenditure nor could the payment and receipt of any amount to any from the chit fund be treated as the business activity of the assessee. The transactions involved did not give rise to any income assessable to income-tax nor any revenue loss in respect of which any deduction could be claimed. Therefore, the Tribunal was right in disallowing the assessee's claim of loss in the chit fund account during the year in question.

We are in complete agreement with the reasoning given by the Punjab and Haryana High Court.

6. For the foregoing reasons, we are of the view that there is no question of law muchless substantial question of law involved in this appeal so as to entertain the same. The tax case appeal is dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan,
Besant Nagar, Madras 90 (with records five copies).

2.The Secretary, Central Board of Direct Taxes,
New Delhi (3 copies).

3. The Income Tax Officer Ward V(3), Chennai 34.

4. The Deputy Registrar
Income Tax Appellate Tribunal,
'C' Bench, Madras-34.

5. Income Tax Officer
Business Ward (V)-3- Madras.

6. The Commissioner of Income Tax (Appeals (VIII)
Madras.

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MDR (CO)
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